IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 976/2007

INDERJIT SINGH & ORS ..... Petitioner
Through Mr. R.M. Bagai with Ms. Anu Bagai, Advs.

versus

UOI & ORS ..... Respondent
Through Mr. Sumeher Bajaj for Mr. Rajeeve Mehra, Adv.

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE J.P. SINGH

Date of Decision : March 12, 2007

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HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE J.P. SINGH

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

1. The Petitioner has assailed, by means of this Writ Petition under Article 226 of the Constitution of India, the decision of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 19.7.2006 whereby the following Order of the

Commissioner was upheld:

i) I order confiscation of 3979 pairs of shoes valued at Rs.32,56,344 and biris, gutka and zarda valued at Rs.3,52,700/- attempted to be exported by M/s. I.J. Exim under Section 119 and 113(i) of the Customs Act respectively and I order a fine in lieu of confiscation under Section 125 of the Customs Act Rs.2.50 lakh and Rs.50,000/- respectively.

ii) I order denial of drawback of Rs.47,506/- on ladies leather boots found short.

iii) I also impose a penalty of Rs.1,00,000/- on Mr. Inderjeet Singh proprietor of M/s. I.J. Exim under Section 114 of the Customs Act.

iv) I order denial of drawback of Rs.1650/- on shoes found short in respect of M/s. Vakil Exports.

2. It should be recalled that Section 130, as it stood before its repeal by the National Tax Tribunal Act, 2005, permitted an Appeal to the High Court. That Appeal was not of a general nature but was restricted to the adjudication or determination of a substantial question of law. A Writ Petition has been filed before us and learned counsel for the petitioner has been unable to disclose what substantial question of law is involved in these proceedings. In fact, his arguments are purely in the nature of a regular appeal. The repealed provisions also mandated that the

High Court must decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded.

3. The High Court of Madras has passed interim Orders in WP(C) No.1290-91/2006 titled *Madras Bar Association -vs- Union of India* dated 20.01.2006 staying the operation of the National Tax Appellate Tribunal Act, 2005 with the result that National Tax Appellate Tribunal has not been constituted. These interim Orders have been assailed before the Supreme Court which has not considered it necessary or expedient to stay the operation of the impugned Orders of the High Court of Madras. It is in these circumstances that a number of writ petitions have been filed in this Court and have been permitted to be withdrawn to enable the filing of Appeals under erstwhile/repealed Section 130 of the Customs Act, 1962. Prima facie, therefore, only an Appeal on a substantial question of law alone can at best be available at the present stage. WP(C) No.12203/2006 was in these circumstances permitted to be withdrawn with liberty granted to file an Appeal. Be that as it may, in order to conclude the matter we have heard this writ petition on merits.

4. Succinctly stated, the facts of the case are that the Petitioner had attempted to export a consignment of 4600 pairs of ladies boots stated to be packed in 250 cartons. A Declaration to this effect had been made. On examination of the consignment by the Respondents it was discovered that boots were packed only in 199 cartons and there was a substantial shortfall in the total number of boots sought to be exported. In the remaining 31 cartons biris, gutka and zarda had been packed. There was no mention of biris, gutka and zarda in the Declaration. These events have resulted in the impugned Order being passed by the Commissioner of Customs.

5. It has been contended by Mr. Bagai, learned counsel for the Petitioner, that the Petitioner had engaged M/s. Karam Freight Movers, who have been duly licensed by the Customs Department. M/s. Karam Freight Movers were thus duty-bound to make a proper Declaration and, therefore, the Petitioner could not be held culpable or responsible in this regard. We cannot accept this argument for the simple reason that M/s. Karam Freight Movers acts as the Agent of the Petitioner. It also appears that the packaging was not done by M/s. Karam Freight Movers. The Petitioner does not allege that M/s. Karam Freight Movers

have packed the biris, gutka and zarda in some of the cartons without their authorisation and knowledge. Therefore, it is the Petitioner who must remain responsible for the mis-declaration.

6. It has next been contended that in fact there is no mis-declaration and that in this context Section 113(i) is not attracted because this argument has no substance since this Section specifically speaks of exported goods which do not correspond in respect of value or in material particular. It has been emphasised that the Checklist for export mentions samples (NFEI). In our view, the presence of biris, gutka and zarda should have been clearly spelt-out and this should not have been vaguely stated to be in the nature of samples. Section 113(i) is attracted as appears to be the case before us.

7. It has also been contended that the Respondents were unduly concerned with customs duties payable in Australia. Even if this is so, it would not detract from the attraction of Section 113(i). International Protocols now make it obligatory on Customs Department to inform each other of attempts to violate the law. There was no justification for exercise of extraordinary powers to strike down such action between

Customs Department of India on the one hand and the foreign countries, such as Australia, on the other.

8. It has next been contended that the Order-in-Original passed by the Commissioner finds M/s. Karam Freight Movers guilty of mis-declaration but yet it has not imposed any penalty on it. In the penultimate paragraph of the Order-in-Original it has been stated - “From the facts and circumstances of the case, I do not find any evidence against Shri Vijay Singh Yadav employee of M/s. Karam Freight Movers, and therefore do not impose any penalty on him”. This is no justification for us to exercise extraordinary powers under Article 226 of the Constitution of India even if M/s. Karam Freight Movers were, in fact, guilty of willful mis-declaration.

9. It has further been contended that the Petitioner has been given treatment adverse to that accorded to M/s. Vakil Exports. That was a case where 25 pairs of shoes were found short in 10 cartons without any other commodities being sought to be clandestinely exported under cover of the purported export of shoes. Furthermore, it is not logical to argue that an order or decision should be set aside only for

the reason that a contrary decision has been taken in the case of another party.

10. We find no merit in the Petition. Dismissed. CM Nos.1716/2007 and 3483/2007 are also dismissed.

(VIKRAMAJIT SEN)
JUDGE

(J.P. SINGH)
JUDGE

MARCH 12, 2007
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